Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of

Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorization from Ameritech Corporation, Transferor to SBC Communications, Inc., Transferee	)	CC Docket No. 98-141
Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access to Next-Generation Remote Terminals	)	NSD-L-00-48 DA 00-891

JOINT COMMENTS OF

CTSI, INC.,
NETWORK PLUS, INC.
NETWORK TELEPHONE CORPORATION

Andrew D. Lipman
Kathleen L. Greenan
Swidler Berlin Shereff Friedman, LLC
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
202-424-4500 (Tel.)
202-424-7645 (Fax)

Counsel for CTSI, Inc., Network Plus, Inc.
and Network Telephone Corporation

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SUMMARY

Providing quality service in a timely manner is essential for a carrier wishing to compete and succeed in the local telecommunications market. Competitive local exchange carriers must rely on their biggest competitor, the incumbent local exchange carrier to accomplish this. Thus, it is not surprising that competitive carriers are now petitioning the Federal Communications Commission for assistance in compelling the incumbent carriers to comply with the mandates of the Telecommunications Act of 1996 as well as Commission orders that require nondiscriminatory treatment for provisioning and conditioning loops.

Commenters endorse the Association for Local Telecommunications Services' ("ALTS") call for "minimum requirements for loop provisioning as a matter of federal law." Commenters further agree that these requirements should be applied to all loops including those loops capable of transmitting digital signals, such as ISDN, ADSL, HDSL, and DS-1 loops. Loop provisioning includes not only the actual providing of the loop, but the preparatory stages before such provision, and the post-provision stages to ensure that loop is functioning properly. Thus, the Commission needs to examine issues pertaining not only to the ordering and delivery of the loop, but the pre-ordering and post-delivery stages as well. The adoption of standards will create consistency and ensure a minimum level of quality for all consumers. Furthermore, standards diminish the ILEC's ability to abuse its control over the process and prevent harm to consumers who choose the services of a CLEC. In these comments, Commenters recommend several clear performance standards that are derived from evidence collected in the various 271 investigations and state commission proceedings. However, Commenters believe these recommended performance standards are a

starting point for the Commission's analysis, and believe that more stringent performance standards may be appropriate.

As indicated in the ALTS Petition, incumbent carriers are not only inhibiting the conditioning of copper loops, they are threatening the availability of copper loops, the vital ingredient to providing advanced services. With the public's increased demand for advanced services, it is imperative that the Commission ensure that incumbent carriers do not suppress the deployment or availability of conditioned loops. Commenters urge the Commission to adopt standards requiring incumbent carriers to condition loops in a timely manner at TELRIC pricing.

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CTSI, Inc. ("CTSI"), Network Plus, Inc. ("Network Plus"), and Network Telephone Corporation ("Network Telephone") (collectively "Commenters"), by their undersigned counsel, hereby comment on the Petition of the Association for Local Telecommunications Services, which seeks a declaratory ruling to govern all aspects of the provisioning process for loops, including those that support broadband technologies.[1] Over four years have passed since enactment of the

[1] *Association for Local Telecommunications Services Petition for Declaratory Ruling: Broadband Loop Provisioning*, CC Dkt. Nos. 98-147, 96-98, 98-141, NSD-L-00-48, DA 00-891 (filed May 17, 2000) ("ALTS Petition").

Telecommunications Act of 1996. During this time, competitive local exchange carriers ("CLECs") have gained a foothold into the telecommunications market. Unfortunately, CLECs still rely, almost exclusively, on the wireline infrastructure owned and controlled by incumbent local exchange carriers ("ILEC"). While Commenters applaud the Commission's continued efforts in mandating access to the wireline infrastructure, Commenters also fully support the ALTS Petition and urge the Commission to adopt rules that will ensure timely and reliable loop provisioning by ILECs.

I. ILECs MUST PROVISION LOOPS TO END USERS IN A RELIABLE, TIMELY FASHION REGARDLESS OF WHAT CARRIER WILL PROVIDE SERVICE OVER THE LOOP (INCUMBENT OR COMPETITIVE CARRIER)

Providing quality service in a timely manner is essential for a carrier wishing to compete and remain in business. Consumers are generally not interested in why their service is late or interrupted, and expect seamless transitions, timely delivery and quality service. Despite CLEC innovation and efforts to meet and exceed customer expectations, CLEC's have no control over loop provisioning, the single most important element to ensuring customer expectations are met.

Commenters endorse the ALTS call for "minimum requirements for loop provisioning as a matter of federal law."[2] Commenters further agree that these requirements should be applied to all loops including those loops capable of transmitting digital signals, such as ISDN, ADSL, HDSL, and DS-1 loops. On numerous occasions, Commenters have attempted to deployed facilities-based service to customers either by initiating a customer's service directly by loop facilities or by transitioning a customer's service from resale (off-net) to facilities-based service (on-net).

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[2] ALTS Petition at 20.

Commenters' efforts have been met with ILEC implementation practices that have stalled, if not prevented, the deployment of CLEC services.

Loop provisioning includes not only the actual providing of the loop, but the preparatory stages before such provision, and the post-provision stages to ensure that loop is functioning properly. Thus, the Commission needs to examine issues pertaining not only to the ordering and delivery of the loop, but the pre-ordering and post-delivery stages as well. The adoption of standards will create consistency and ensure a minimum level of quality for all consumers. Furthermore, standards diminish the ILEC's ability to abuse its control over the process and prevent harm to consumers who choose the services of a CLEC.

As ALTS has pointed out, the Commission does not need to start from scratch in developing these standards. Standards have been established in the process of investigating and examining the regional Bell Operating Companies ("RBOC") applications for Section 271 authority to provide in-region, interLATA authority. These standards have originated not only from this Commission, but from the evaluation of these applications by state public utility commissions and the United States Department of Justice. This Commission needs to simply garner from the extensive record created in these proceedings what technically viable standards are needed to minimize ILEC discriminatory treatment and to ensure access to all loops.

The following are proposed standards for the various aspects of loop provisioning. The proposed standards are broken down in a chronological manner, *i.e.*, starting from the stage where the CLEC begins formulating its order to post-delivery issues. Standards will be proposed for both voice-grade loops and xDSL-capable loops where the standards do not overlap. These standards are

a starting point for the Commission; however, Commenters believe that more stringent standards may be appropriate.

A. Pre-Ordering

The pre-ordering stage begins when a CLEC is successful in convincing a customer to switch service providers. This is a very difficult stage for a CLEC in that it has a customer waiting for service, yet the CLEC must rely on its biggest competitor, the ILEC, to ensure timely delivery of the proper service to the customer. As the Commission has noted:

> [g]iven that pre-ordering represents the first exposure that a prospective customer has to a competing carrier, it is critical that inferior access to the incumbent's OSS does not render the carrier a less efficient or responsive service provider than the incumbent.[3]

The general rule that this Commission has applied to the pre-ordering stage in the context of its Section 271 evaluations has been that since most pre-ordering functions that support service through unbundled network elements are analogous to the pre-ordering of a BOC's retail services, the BOC must demonstrate that "it provides requesting carriers access that enables them to perform these functions in substantially the same time and manner as [the BOC's] retail operations."[4] For those pre-ordering functions that lack a retail analogue, the BOC "must provide access that affords an efficient competitor a meaningful opportunity to compete."[5] This rule is subject to interpretation,

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[3] *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA service in the State of New York*, CC Docket No. 99-295, FCC 99-404 (December 22, 1999) at ¶ 129 ("*BANY Order*").

[4] *Id.*

[5] *Id.*

which enables the ILEC to maneuver compliance in its favor. This leaves the CLEC with very few options: either accept inferior treatment from the ILEC despite the Commission's mandate or expend significant time and financial resources to demonstrate before a regulatory body that the ILEC is non-compliant. The Commenters urge the Commission to implement its rules with specific, numerical standards that can be measured by all carriers.

1. Application to Application Interface

Proposed Standard – Parsed CSRs provided in parity plus ten seconds.

The Commission has previously emphasized that "providing pre-ordering functionality through an application-to-application interface is essential in enabling carriers to conduct real-time processing and to integrate pre-ordering and ordering functions in the same manner as the BOC."[6] Access to the application interface means nothing if valid CLEC entries are rejected or mishandled. For example, BellSouth's order processing software, Local Exchange Navigator System ("LENS"), is consistently rejecting valid CLEC inputs. BellSouth often excuses such rejections, costly to the CLEC, as "glitches" on LENS. The ILEC suffers no harm; rather, the ILEC is benefitted by its "malfunctioning system" by expending CLEC resources and stalling CLEC business. ILECs must be required to process CLECs entries in the same efficient manner it processes its own retail entries.[7]

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[6] *Id.*

[7] For instance, the New York Public Service Commission has instituted a performance metric for parsed CSRs transactions that require parity with retail plus not more than ten seconds. *See Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies*, Order Establishing Additional Inter-Carrier Service Quality Guidelines and Granting in Part Petition for Reconsideration, Clarification, and Stay, Case 97-C-0139 (NY PSC Nov. 5, 1999) (*"NY PSC Order I"*).

2. Loop Make-up Information

Proposed Standards
Mechanized Loop Qualification - Parity with retail plus four seconds.
Manual Loop Qualification - 95% of requests completed within 72 hours.

CLECs need access to detailed information about available loops including the length of the loop, the presence of bridged taps, load coils, and digital loop carrier equipment and the loop termination (*i.e.*, central office or remote terminal).[8] These loop characteristics may impede a CLECs ability to provide service to an end user either because the character of the loop is not appropriate for the service or because the hurdles to jump to obtain conditioning services from the ILEC are too great. As ALTS demonstrates in its Petition, SBC's loop qualification system is grossly out of parity with the access SBC provides to its retail DSL sales force.[9] CLECs frequently spend significant resources marketing service to a customer only to find that the CLEC cannot provide its service to a customer or must notify the customer of certain delays due to the loop make-up.

As with pre-ordering standards, timing intervals to measure BOC performance in loop qualification is necessary. It is not enough to see if response time is at parity as the Texas Public Utility Commission does.[10] The New York Public Service Commission (PSC) has set two

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[8] *BANY Order* at ¶ 141.

[9] ALTS Petition at 24.

[10] The Texas PUC has a Performance Measure 57 that tracks average response time for loop make-up information for both manually generated and electronically generated xDSL orders. *See* CC Docket 00-65, April 26, 2000 Evaluation of the Texas Public Utility Commission, p. 28.

performance measures. The first, PO-1-06, tracks average response time for mechanized loop qualification, with the standard being parity with retail but not more than 4 seconds.[11] PO-8-01 tracks the average response time for manual loop qualification, and the standard is 95% completed within 72 hours.[12] Commenters recommend that ILECs across the Country be held to the same standard adopted by the New York Commission.

B. Ordering

Proposed Standards: Return of 95% of mechanized order confirmation and rejection notices within two hours of submission to BOC, and 95% of manually processed order confirmation and rejection notices under ten lines within 24 hours of submission.[13]

1. Order Rejects

This Commission has previously focused on flow-through rates as an indica of parity in the ordering stage.[14] As ILEC ordering systems become more mechanized, flow-through rates have ceased to be the prime area of inquiry. Instead this Commission has focused on an ILEC's "overall ability to return timely order confirmation and rejection notices, accurately process manually handled

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[11] *Proceeding on Motion of the Commission to Review Service Quality Standards for Telephone Companies*, Order Establishing Additional Inter-Carrier Service Quality Guidelines and Granting in Part Petitions for Reconsideration and Clarification, Case 97-C-0139 (NY PSC Feb. 16, 2000), p. 19 (*NYPSC Order #2*).

[12] *Id.*

[13] For xDSL services, the applicable timeframe is 72 hours.

[14] "Flow-through" refers to orders that are transmitted electronically through the gateway and accepted into the ILEC's back office ordering systems without manual intervention. *BANY* Order at ¶ 160, fn. 488. The flow-through rate often "serves as a yardstick to evaluate whether an incumbent LEC's OSS is capable of handling reasonably foreseeable commercial volumes of orders." *Id.* at ¶ 162, fn. 496.

orders, and scale its systems."[15] Data from the SBC application suggest, however, that flow-through may still be a big problem. Sprint pointed out that reject rates for orders sent over the SBC's electronic interfaces have reached a percentage plateau in the mid-20s.[16] Sprint has demonstrated that SBC cannot attribute these errors as CLEC-caused.[17]

Thus, given the prevalence of high rejection rates and low flow-through rates, the timing of the delivery of rejection notices becomes all the more critical. Failure to return timely rejection notices is particularly infirm because "new entrants cannot correct errors and resubmit orders until they are notified of their rejection."[18] AT&T has observed that the situation is compounded in Texas where not only are their high rejection rates, but more than a third of SBC's rejection notices are manually typed by an SBC representative before they are sent to CLECs – a process that leads to excessive delays.[19] SBC retail ordering systems, however, possess capabilities that allow for all but a small percentage of errors to be detected electronically before the order is even submitted.[20] The effects of untimely reject notification on CLECs is starkly demonstrated by the experience in Texas.

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15 *Id.* at ¶ 163.

16 CC Docket No. 00-65, April 26, 2000 Petition to Deny of Sprint Communications Company, L.P. at 39 (*Sprint SBC 271 Comments*).

17 *Id.* at 40.

18 *Id.* at 43 *citing Application of BellSouth Corp. to Provide In-Region, InterLATA Services in South Carolina*, 13 FCC Rcd. 539, ¶ 117 (1997).

19 *AT&T SBC 271 Comments* at 49.

20 *AT&T SBC 271 Comments* at 50.

As MCI WorldCom noted:

> Orders that are rejected take far longer to complete especially when rejects are manually processed. SWBT takes more than six hours on average to manually process the rejects which are then returned to the CLECs. The CLECs must in turn determine the problem with the initial order, correct that problem - which often requires significant work by the CLEC and re-transmit the order. Even the re-transmitted order is likely to take longer to process than a typical order. This is because SWBT manually processes all supplemental orders to correct manually processed rejects. Thus, SWBT's high reject rate, high level of manual processing of rejects, and slow return of those rejects pose a substantial barrier to CLEC entry.[21]

Strict timing metrics coupled with enforcement mechanisms will provide ILECs the incentive to process fully electronic rejects.

2. Malfunctioning of Order Processing Systems

Network Telephone has experienced numerous instances where its valid orders have been rejected due to the malfunctioning of BellSouth's ordering system, LENS. Despite efforts to input all necessary and valid information, the CLEC order is still rejected, which results in significant time delays and customer cancellations. The BellSouth LENS system will also incorrectly query a Network Telephone order in error, again causing significant delays and expense in manpower to reprocess such orders. BellSouth attributes the numerous mistakes, costly to Network Telephone, as glitches or system malfunctioning. ILECs should not benefit for substandard or defective ordering systems. Furthermore, ILEC should not be permitted on a consistent basis to dismiss these costly mistakes by claiming system malfunctioning.

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[21] *WorldCom SBC 271 Comments*, at 28 (citations omitted).

3. Jeopardy Notices

Proposed Standard - Timeliness of notice of jeopardy of service order request where miss is known in advance of due date (missed commitment with new date/time).

100% within 24 hours before due date with facilities.
100% within 48 hours before due date without facilities.

Jeopardy notices involve notification by the BOC to the CLEC that a service installation or repair due date will be missed.[22] The importance of jeopardy notices cannot be overstated. Customers will not tolerate missed or delayed appointments. While the mishap is wrongfully attributed by the customer to the CLEC, the ILEC has control over the process and the ability to mitigate the damage to the CLEC. Network Telephone submits that, without notice, BellSouth has missed numerous due dates to switch a consumer from BellSouth to Network Telephone. BellSouth simply fails to show up. Customers cancel orders for service due to the BellSouth failure to meet its commitment. BellSouth rarely provides a reason beyond being too busy.

The Commission has heretofore declined to require a BOC to actively provide jeopardy notices, instead of merely providing access to such information.[23] The Commission also rejected overtures that a BOC must be required to provide notices before the due date that it is going to miss albeit recognizing that "a system designed to deliver jeopardy notification well in advance of missed appointments would lessen the impact of such misses."[24] Commenters submit that the impact of

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22 *BANY Order* at ¶ 184.

23 *Id.* at ¶ 185.

24 *Id.*

such misses are cancellation of CLEC services and aggravated, inconvenienced customers. The CLEC suffers bad customer relations at the outset due to the ILEC's actions. CLEC and CLEC customers should not be penalized just to preserve the impact of ILEC missed appointments.

The Commenters request that the Commission reconsider its prior determinations on jeopardy notices. A possible standard is the "Due Date Minus Two" procedure, a procedure applied by Bell Atlantic in regard to hot cuts. Under this procedure, Bell Atlantic is required to check for a competing carrier's dial tone two days before a hot cut date and promptly notify the carrier if there is a problem.[25] This procedure, in the words of the NY PSC, "allows the [competitive LEC] the opportunity to notify its customer of potential delay and, if necessary, postpone the due date."[26] The Commission commended Bell Atlantic for developing this jeopardy process for hot cuts and found "that it appears to be critical to the proper functioning of the hot cut process."[27] There is no reason why BOCs should not implement a similar jeopardy process for non-hot cut orders, especially since such a process is equally critical for those orders.

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25 *BANY Order*, ¶ 186.

26 *Id.*

27 *Id.*

C. Provisioning

1. Average Completion Intervals

Proposed Standard - ILEC must provision 95% of xDSL orders within 3 business days (for 1-10 loops), 7 business days (for 11-20 loops) and 10 business days (for 20+ loops).

Enough data has been collected to determine Average Installation Intervals for loop provisioning. The Commission has extolled the importance of such data in the past as "direct evidence of whether [a BOC] takes the same time to complete installations for competing carriers as it does for [itself], which is integral to the concept of equivalent access."[28] Now is the time to create intervals based on the data demonstrating the installation times for ILEC customers. For example, in response to an order for loops, Network Plus was provided a firm order commitment ("FOC") of 10 days. The potential Network Plus customer was provided a FOC of 2 days from the ILEC and, therefore, decided to subscribe to the ILECs service instead. It is counter productive to view this data continually on an *ex post facto* basis. Such actions have already taken place and ILEC failures to equitably provision loops in the past cannot be remedied for the CLEC. However, such substandard performance can be prevented in the future if the Commission adopts intervals on a prospective basis. ILECs would no longer be permitted to give the CLEC a 10 day FOC and the customer a 2 day FOC.

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[28] *Id.* at ¶ 193.

2. Hot Cuts

Proposed Standard

TX PUC Benchmark - 100% of orders of 24 lines or fewer completed within two hours.
Analogous Bell Atlantic New York Order standard - 90% of orders of ten loops or fewer to be completed within one hour.
Proposed CLEC standard - 95% of orders of ten loops or fewer to be completed within one hour.

To ensure a seamless transition in service, CLECs often request a process known as a "hot cut," which entails manually disconnecting the customer's loop in the BOC's central office and reconnecting the loop at the competing carrier's collocation space.[29] The customer is taken out of service while the hot cut is in progress, thus, the "hot" in the cut.[30] The hot cut procedure, which attaches specific standards of performance for switching the customer, must be available at TELRIC pricing to CLECs. It is, of course, critical that the hot cut is provisioned correctly with coordination between the BOC and the competing carrier because problems with the cutover could result in extended service disruptions for the customer.[31] For a competing carrier trying to convince a customer that its change from the incumbent to the competitor was the correct choice, it goes without saying that the shorter the service disruption the better.

Hot cuts must be available to CLECs. Commenters cannot stress enough the importance of "hot cuts". The paramount need to ensure that the customer experiences no interruption in service

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29 *Bell Atlantic New York Order*, at ¶ 291, fn. 925.

30 *Id.*

31 *Id.*

results in many CLECs requesting that the BOC perform the "hot cut" during out-of-service hours. Such service provisioning is no different than that which the BOC provides for its own customers. However, certain BOCs reject hot cut and out-of-service provisioning for CLECs or impose inflated prices for such services. According to Southern New England Telephone ("SNET"), hot cuts are outside the scope of the Telecommunications Act of 1996. A Connecticut proceeding addressed SNET's position that these services (hot cuts, out-of-service hours, etc.) are outside the scope of the Act. Last fall, the Connecticut Department ordered SNET to tariff these services for POTS lines (not DSL) at cost-based rates.[32] SNET appealed the Department's decision in state court and won a stay. Thus, at this time, a CLEC may only obtain these services by acquiescing to SNET demands.

For example, despite Network Plus' execution of an interconnection agreement in June 1999, SNET insisted that a Memorandum of Understanding ("MOU") be executed before SNET would accept orders for hot cuts. The MOU, which sets forth SNET's nonTELRIC rates, is *in addition* to the Interconnection Agreement. Network Plus was delayed in deploying facilities-based service for several weeks while waiting for SNET to produce the MOU for signature. The delay was caused by internal administrative confusion between SNET, Ameritech and SBC.[33] Network Plus was

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[32] *See Decision*, MCI WorldCom, Inc. Docket No. 99-02-07.

[33] This is just one example of how the SBC merger has caused an immense disruption in the provisioning process. The constant chaos and shuffling of SBC personnel leaves a CLEC with either no contact person or a contact person that is never available. In this particular instance, the SNET account representative assigned to Network Plus was moved to a different SNET division. While Network Plus was told that it must have the MOU executed, Network Plus had no account representative to produce the MOU. Eventually, an Ameritech representative was assigned to Network Plus' SNET account. However, this representative did not know about the MOU nor how to quickly obtain a copy.

forced to expend significant resources contacting SNET/Ameritech/SBC personnel to obtain the Memorandum. Thus, not only did SNET's imposition of an MOU with inflated rates caused significant delay, but SBC's internal merger activities pose an additional delay and expense. Time to market of course forces most CLECs to capitulate to BOC demands.

Not only must hot cuts be available, but they must be performed correctly. The Commission stated that on-time hot cut performance at a level of 90 percent or greater is sufficient to permit carriers to enter and compete in a meaningful way in the local exchange market.[34] A BOC's inadequate hot cut performance will have a devastating effect on the development of local competition. Deficiencies in hot cut performance will impose costs on the CLEC, try the end user's patience and provide competitive benefits to the BOC. According to a survey conducted by the Competition Policy Institute, the "[s]trongest impediment to switching [LECs] comes from concern about service interruptions during the change over."[35]

Thus, BOCs have a perverse incentive to provide lower quality service in regard to hot cuts, at least up to the boundaries that the Commission's "minimally acceptable standards" will provide. One of the key issues in the appeal by AT&T Corp. and Covad Communications of the *Bell Atlantic New York Order* is that the Commission failed to impose a hot cut performance standard that is

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[34] *Id.* at ¶ 298.

[35] Evaluation of the United States Department of Justice, *In re: Application of New York Telephone Company (d/b/a Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc. for Authorization to Provide In-Region, InterLATA Services in New York,* CC Docket No. 99-295 (November 1, 1999), at 18, fn. 39.

technically and commercially feasible for the BOC.[36] For instance, the standards in the *Bell Atlantic New York Order* already constituted a departure from performance standards that the New York Public Service Commission, and Bell Atlantic itself, felt were capable of being achieved.[37] AT&T astutely observes that BOCs have every incentive to perform down to the standard, *i.e.*, allow as many outages as it can consistent with regulatory requirements.[38]

The evidence in recent Section 271 applications suggest this is the case. Bell Atlantic's performance constituted the minimally acceptable showing.[39] SBC's performance has been even worse. As the Department of Justice noted, "SBC's performance with regard to 'hot cuts' is worse than Bell Atlantic's performance in New York, which the Commission concluded was 'minimally acceptable.'"[40]

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[36] *See* Brief for Appellants AT&T Corp. and Covad Communications Company at pp. 43 to 49, *AT&T Corp., et al., v. Federal Communications Commission* (No. 99-1538)(D.C. Cir)(Appellants argue that substantially better performance standards were "technically feasible" in comparison to those the FCC found minimally acceptable).

[37] *Id.* at 48. For instance, the NY PSC had set a minimum standard of 95 percent on-time performance, not the 90% standard eventually established. *Bell Atlantic New York Order* at ¶ 292.

[38] *AT&T SBC 271 Comments*, at 28.

[39] *BANY Order*, at ¶ 309.

[40] CC Docket 00-65, February 14, 2000 Evaluation of the United States Department of Justice, at 27.

The FCC has recognized that hot cut performance is vital not only to CLECs, but the public at large, because failure in this area leads to loss of, or disruption to, service.[41] Thus, Commenters urge the Commission to set high standards, the minimum acceptable level, for hot cuts.

II. ILECs MUST CONDITION LOOPS IN A TIMELY MANNER AND ACCORDING TO FORWARD LOOKING PRICING PRINCIPLES.

A. UNE Loops Are Essential to Competitive Advanced Services.

As acknowledged by the Commission, a paramount goal of the Telecommunications Act is to promote "innovation, investment, and competition among all participants and for all services in the telecommunications marketplace, including advanced services."[42] This goal exemplifies the true needs and demands of the public for advanced services, which have increased significantly over the past few years, most specifically in the demand for DSL services. With the public's increased demand for DSL services, it is imperative that the Commission ensure that ILECs do not inhibit deployment or availability. As indicated in the ALTS Petition, ILECs are not only inhibiting the conditioning of copper loops, they are threatening the availability of copper loops, the vital ingredient to providing DSL services.

Advanced services use existing copper telephone loops to transmit information at incredibly high rates of speed. These copper loops have historically been used by ILECs to provide traditional voice telephone service, and have frequently been encumbered by various devices designed to

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[41] *Bell Atlantic New York Order* at ¶ 309.

[42] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Fourth Report and Order (rel. Dec. 9. 1999), at ¶ 1 (*Fourth Report and Order).*

enhance the loops' ability to provide those voice services. While these encumbrances, which include load coils, low pass filters, bridged tap, repeaters and similar devices, can enhance the quality of voice transmission, they generally preclude the deployment of DSL to the customer served by that loop. As a result, unless the encumbrances are removed from the loop, advanced services cannot be provided using that loop, and the customer is left with no access to the efficiencies and benefits offered by DSL services.

B. ILECs Must Condition Loops In A Timely Fashion.

The Commission has recognized the damage caused by lack of access to conditioned copper loops. In its *Fourth Report and Order,* the Commission stated that: "lack of access to the high frequency portion of the local loop materially diminishes the ability of competitive LECs to provide certain types of advanced services to residential and small businesses users, delays broad facilities-based market entry, and materially limits the scope and quality of competitor service offerings."[43] The Commission requires ILECs to remove existing encumbrances from copper loops upon the request of a CLEC that wishes to provide advanced services,[44] even if the ILEC itself does not intend to offer DSL services to the customer on the loop.[45] However, if the requirement that ILECs condition loops is to truly encourage competition, the Commission must require that ILECs not only condition loops, but condition them in a timely fashion. The Commission should act promptly to

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43 *Fourth Report and Order*, at ¶ 5

44 *Fourth Report and Order*, at ¶ 83.

45 *Id.*

require ILECs to condition loops according to a federally mandated standard, otherwise, the ILECs will continue to slow roll the deployment of advanced services by simply taking their time to condition loops. The result will be to ultimately eliminate competition for advanced services by rendering the ILEC in a particular market the only viable provider of advanced services.

C. ILEC Loop Conditioning Costs Should Be Consistent With TELRIC Pricing Principles.

The Commission has recognized that the charges an ILEC will seek to impose to condition copper loops are likely to pose substantial barriers to entry, and could deny consumers the benefits offered by advanced services. Specifically, the Commission has stated:

> [w]e recognize, however, that the charges incumbent LECs impose to condition loops represent sunk costs to the competitive LEC, and that these cost may constitute a barrier to offering xDSL services. We also recognize that incumbent LECs may *have an incentive to inflate the charge for line conditioning by including additional common and overhead costs, as well as profits*[46]

In an effort to avoid the impediments to a pro-competitive marketplace that would result if an ILEC were permitted to impose inflated charges on its competitors, the Commission has assigned state commissions the responsibility to review the rates that an ILEC proposes to charge for UNEs such as conditioned loops, and to ensure that those charges comply with the Commission's pricing rules.[47]

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[46] Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-96, Third Report and Order and Fourth Notice of Proposed Rulemaking, Commission 99-238 (rel. Nov. 5, 1999) (UNE Remand Order), at ¶ 194. (Emphasis supplied).

[47] *Id.*

The Commission has also charged the states to ensure that ILECs do not misuse the Commission's loop conditioning "measures for anti-competitive purposes.[48]

The Commission's concern that ILECs would act in an anti-competitive fashion and seek to impose inflated, anti-competitive loop conditioning charges on their competitors is well-placed. Today, across the United States, CLECs are being met with proposals for ridiculously overstated loop conditioning charges. The Commission should take immediate steps to halt this unfortunate (but predictable) outcome by affirmatively requiring states to prohibit ILECs from charging more to loop condition loops than is allowed by the Commission's forward looking pricing rules.

State commissions are struggling with the Commission's imprecise mandates to ensure that ILECs cannot charge backward looking, overstated prices to condition loops. A simple comparison of the interim rates adopted the Texas Public Utility Commission (Texas PUC) and the rates adopted by the Connecticut Department of Public Utilities (Connecticut DPU) in a Draft Decision last week illustrates the urgency of this matter. In each instance, though the ILEC is owned and controlled by the same company, SBC, the loop conditioning rates bear no relation to one another and are not justified by meaningful differences in the markets at issue. The chart below illustrates this point by highlighting the rates set by the Connecticut DPU and the Texas PUC to condition a loop over 17,500 and 18,000 feet in length, respectively.

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[48] *Fourth Report and Order*, at ¶ 86.

	Connecticut Draft Decision Rates [49]	Interim Texas Rates[50]
Removal of Repeater	$1,256.62	$16.25
Removal of Bridged Tap	$1,935.34	$24.46
Remove Load Coils	$1,470.37	$40.55

Additionally, while the Texas DPU required the ILEC to condition loops in multiples of 50, thus increasing ILEC efficiencies, the Connecticut DPU denied a request for multiple loop conditioning, stating that it would only grant such a request if the CLEC could "guarantee that multiple loop conditioning would be conducted only on those lines that did not serve any voice communications."[51] The Connecticut DPU made this statement even though the answer to the question whether or not a line serves a voice customer is known only to the ILEC. The Connecticut DPU also made this statement in the face of CLECs' specific testimony in the record that they were requesting multiple loop conditioning only where there would be no degradation of voice service to an existing ILEC customer.

Another area where the Commission's specific guidance is needed is with respect to the

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[49] *See* Draft Decision, DPUC Review of the Southern New England Telephone Company's Studies of Unbundled Network Elements Non-Recurring Charges, Docket No. 00-03-19 (rel. June 14, 2000). The Connecticut DPU's Draft Decision is subject to change based on exceptions filed and an oral argument on June 23, 2000. Though not final, the Draft Decision shows the direction in which the Connecticut DPU is leaning, thus underscoring the urgency of Commission action to standardize loop conditioning rates and practices across the country.

[50] *See* Arbitration Award, Docket Nos. 20272 and 20226 (rel. Nov. 1999), pp. 98-102. The interim Texas rates are subject to refund or surcharge upon approval of permanent rates, and SWBT was ordered to submit TELRIC-based loop conditioning cost studies.

[51] Draft Decision, at 22.

conditioning of loops less than 18,000 feet in length. The Commission has specifically recognized that encumbering devices serve no purpose on loops of 18,000 feet or less.[52] The Commission must make clear that ILECs cannot charge CLECs to condition loops under 18,000 feet. This lack of clarity is resulting in a patchwork of conditioning rates for loops under 18,000 feet. For example, Bell Atlantic's CLEC Handbook, which sets the ground rules for CLECs operating in Bell Atlantic's Connecticut service territory (in addition to other service areas), states that ADSL loops that are less than 18,000 feet "shall be non-loaded,"[53] while in Connecticut, the Southern New England Telephone Company charges to condition loops between 12,000 and 18,000 feet, but not less than 12,000 feet.

These variations are not validated by meaningful marketplace conditions. Rather, they are explained simply by the fact that the Commission's orders regarding the applicability of its forward looking pricing rules to loop conditioning is confusing and unclear. The Commission should promptly explicitly hold that loop conditioning charges adhere to TELRIC pricing principles as a matter of law. As the number of ILECs becomes smaller due to the recent mega-mergers, it should not be difficult to impose, nor burdensome to implement, consistent, equitable standards applicable to the giant that controls the majority of the infrastructure.

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[52] *UNE Remand Order*, at ¶ 172; *see also Fourth Report and Order*, at ¶ 82.

[53] *See* Bell Atlantic CLEC Handbook, Vol. III, § 2.3.5.1 (at http://www.bellatlantic.com/wholesale/html/handbooks/clec/volume_3/c3s2_3.htm).

III. ACCESS TO COPPER LOOPS IS ESSENTIAL TO COMPETITIVE DEPLOYMENT OF ADVANCED SERVICES.

As advocated in the ALTS Petition, the Commission should act to ensure that unbundled copper facilities remain available to CLECs. While CLECs intend to be the first to exploit the capabilities of copper loop technology, ILEC plans to deploy fiber in ways that remove copper loops will put an end to CLEC innovation. Copper loop facilities are currently the pathway for public access to advanced services. Market innovation has made this possible. The Commission should ensure that such useful facilities remain in existence. Without Commission intervention, the availability of advanced services will be threatened by various ILEC plans that will result in a decrease or elimination of competitive access to copper facilities in numerous markets throughout the Country.

The is no legitimate reason for ILECs to retire copper loops. The preservation of competitive access to copper would not impinge upon the ILECs' ability to modernize and expand their network infrastructures or their ability to compete and innovate in the advanced services market. On the contrary, in many cases access could be assured if the ILECs were simply required to improve copper shortages by agreeing to "swap" loops by moving an existing service to fiber in order to free copper facilities. The Commenters urge that all ILECs be required to offer swapping whenever technically feasible.

The Commission is well aware that copper is required to provision DSL, but more is at stake here than the success of DSL. Preservation of the copper facilities upon which competition today is founded is crucial to the success of individual competitors, but, more importantly, to the vibrancy

of competition itself. In this nascent period in the development of a competitive market for advanced services, the Commission should guard against developments that would have the effect of removing existing, useful infrastructure. Therefore, the Commission should require ILECs to offer copper swapping and to maintain copper facilities that bypass fiber connections to a central office.

IV. THE COMMISSION SHOULD ESTABLISH RULES GOVERNING ESCALATION OF UNRESOLVED MAINTENANCE AND REPAIR PROBLEMS

Unresolved maintenance and repair problems materially impair the ability of a requesting carrier to provide the services it seeks to offer in the local telecommunications market. Such neglect not only harms the CLEC's business, but penalizes the customer for choosing a CLEC. Unfortunately, the CLEC has no ability to improve the maintenance process for its customers. As the Commission noted in its Memorandum Opinion and Order granting Section 271 authority to Bell Atlantic[54] "[a] competing carrier that provides services through resale or unbundled network elements remains dependent upon the incumbent LEC for maintenance and repair."[55] In order to compete effectively in the local marketplace a CLEC must be able to obtain a timely and successful repair of malfunctioning UNEs.

It is Commenters experience that trouble tickets are often prematurely closed, even if the customer is still out of service, because the ILEC technician is unable to find a problem in the

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[54] *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, Memorandum Opinion and Order, CC Docket No. 99-295, 15 F.C.C.R. 3953. (rel. Dec. 22, 1999)(*Bell Atlantic §271 Order*).

[55] *Bell Atlantic §271 Order* at ¶ 212.

location to which the ILEC dispatched the technician. Frequently, there is repeated trouble on the same customer line resulting in the customer repeatedly suffering through several days of either no service or, at best, intermittent service. CLECs are required to open a new trouble ticket each time. When CLECs attempt to escalate these problems within the ILEC organization, they frequently obtain a late response or no response at all. The variety of problems that CLECs experience in attempting to obtain repairs - no shows, closing out the ticket when trouble continues, repeated failures, unresponsive repair managers - shows the need for rules governing ILEC repair procedures.

For these reasons, the Commission should establish repair performance metrics and escalation procedures. It is important that these rules function automatically without imposing administrative and regulatory burdens on competitors.[56] Specifically, Commenters propose that the Commission adopt the following escalation standards to customer outages occurring with UNE services, including loops, transport, UNE-P, and resale services. For hot cuts, CLECs should be updated hourly on the status of correcting the service problems. Also, the CLEC and ILEC should have the option of agreement to different escalation schedules in specific situations.

- If trouble occurs within the network elements provided the ILEC, the CLEC will first determine whether the trouble is in the CLEC's own equipment and/or facilities or those of the End User. If the CLEC determines the trouble is in the ILEC's equipment and/or facilities, the CLEC will issue a trouble report to the ILEC via the ILEC's electronic interface.

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[56] The Commission made this very point in the *Bell Atlantic §271 Order* when discussing the performance assurance plans adopted by the New York Commission. *See Bell Atlantic §271 Order* at ¶ 12.

- If the ILEC trouble ticket remains open after 4 hours, the ILEC will escalate proactively the trouble ticket to a first-line supervisor. Such supervisor will provide the CLEC with an Action Plan to resolve the trouble within the next 4 hours.

- If the trouble ticket remains open after 8 hours, the ILEC will escalate proactively the trouble ticket to a Manager. Such Manager will update the CLEC within 12 hours after the trouble ticket is opened with an Action Plan to resolve the trouble.

- If the trouble ticket remains open after 12 hours, the ILEC will escalate proactively the trouble ticket to the Director level. Such Director will update the CLEC within 16 hours after the trouble ticket is opened with an Action Plan to resolve the trouble. At this time, the CLEC may request hourly updates from the ILEC. This will permit the CLEC to better address its customer's concerns.

- If the trouble ticket remains open after 24 hours, ILEC will escalate proactively the trouble ticket to a Vice President. Such Vice President update the CLEC and agree to a same day vendor meet at location(s) necessary to resolve the trouble within 8 business hours.

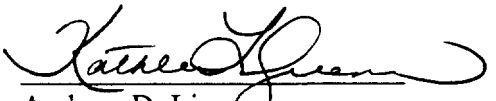
- All trouble tickets will remain open until the ILEC , through the same electronic interface used to submit the trouble ticket, notifies the CLEC that the trouble ticket has been resolved, and the CLEC, within 12 hours, confirms resolution or denies resolution. If the CLEC denies resolution, the ILEC will continue resolution on the original ticket; the ILEC will be prohibited from requiring the CLEC to open a new trouble ticket in such instances.

Establishment of these federal rules for resolution of trouble tickets will further the goals of the Act, promote the rapid development of competition and bring the benefits of competition to the greatest number of consumers.

V. CONCLUSION

For the reasons stated above, Commenters urge the Commission to establish a federal standard for each stage of the loop provisioning process so that the pro-competitive provisions of the Telecommunications Act can be implemented and American consumers can reap the benefits of competition.

Respectfully submitted,



Andrew D. Lipman
Kathleen L. Greenan
SWIDLER BERLIN SHEREFF FRIEDMAN, LLP
3000 K Street, NW Suite 300
Washington, DC 20007

Counsel for CTSI, INC.,
NETWORK PLUS, INC. AND
NETWORK TELEPHONE CORPORATION

Dated: June 23, 2000

CERTIFICATE OF SERVICE

I, Celia Petrowsky, hereby certify that on this 23rd day of June 2000, copies of the foregoing Joint Comments of CTSI, Inc., Network Plus, Inc., and Network Telephone Corporation were delivered by hand to the following:

Janice M. Myles
Common Carrier Bureau
Federal Communications Commission
445 12th Street, S.W. - Room 5-C327
Washington, DC 20554

Jonathan Askin
General Counsel
Association for Local Telecommunications Services
888 17th Street, N.W. - Suite 900
Washington, DC 20007

International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, DC 20036

Glen B. Manishin
Stephanie A. Joyce
Patton Boggs LLP
2550 M Street, N.W.
Washington, D.C. 20037

Celia Petrowsky

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